IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 171 OF 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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BABUBHAI RAVJIBHAI PATEL & ANR. - Appellant(s)
Versus
RAMABHAI SOMABHAI POLICE & ORS. - Respondent(s)

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Appearance :
Shri Y.V. Shah for Appellant(s) : 1 - 2.
None for Respondent(s) : 1 - 2.
Ms. Lilu K. Bhaya for Respondent(s) : 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 07/08/2007

ORAL JUDGMENT

The appellants, being aggrieved by the award dated 3rd

October, 1988 passed by the learned Motor Accident Claims Tribunal, Valsad at Navsari in M.V.C.P. No.47 of 1984, are before this Court with a submission that the learned Tribunal below erred in dismissing the claim petition.

2. The short facts necessary for disposal of the present appeal are that the appellants-claimants came to the lower Court with a submission that the truck bearing Registration No.GRD-7217 was rashly and negligently driven by respondent No.1, it had hit a young boy of 15 years who was going on a cycle. The respondents appeared before the lower Court and submitted that the truck was going on with a steady speed; after hearing some sound from the back, the driver stopped the vehicle and found that the cyclist had fallen on the ground. They submitted that the boy was trying to overtake the truck, but, as his cycle wheel fixed in the road side mud, he fell on the body of the truck and suffered fatal injuries.

3. The learned Tribunal below, after hearing the parties, came to the conclusion that the claimants could not prove that the driver of the vehicle was negligent or was cause of the accident.

4. Shri Y.V. Shah, learned Counsel for the appellants, however, submitted that there are contradictions in the statements and the

pleadings and as a police truck is involved in the matter, this Court should be extra cautious in scrutinising the evidence.

5. Ms. Lilu K. Bhaya, learned Counsel for respondent No.2 submitted that the facts, which are apparent, would show that respondent No.1 was not rash and negligent and that he did not cause the accident. Referring to the evidence, she submitted that from the statement of the driver, it would clearly appear that he was neither negligent nor rash, nor was the cause of the accident.

6. From the evidence available on the records, it would clearly appear that the dyeing declaration of the boy was recorded under Exh.34. It was recorded by the Taluka Magistrate; it was mentioned in the dyeing declaration that the police truck was going ahead of the deceased and near Satyanarayan Saw Mill, as there was mud on the side road, the cycle of the deceased stuck in the mud and thereafter, the deceased dashed with the police truck, he fell down after suffering the injuries on his left leg, right knee and abdomen. If this dyeing declaration remains uncontroverted, then, it cannot be held that the truck driver was rash and negligent. The companion of the deceased, who was yet another cyclist, was also examined, but, he did not narrate anything about the rashness and negligence of the driver. Once it is held that the driver of the truck was not rash and negligent, then, such driver

cannot be held liable to the claim made against him.

7. I find no reason to interfere. The appeal deserves to and is, accordingly, dismissed. No costs.

[R.S.Garg, J.]

*kamlesh**